

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MINNESOTA**

Florence Austin  
11390 Minnetonka Mills  
Minnetonka, MN 55305

Nia Austin  
11390 Minnetonka Mills  
Minnetonka, MN 55305

Plaintiffs,

v.

Emilio T. Gonzales  
United States Citizenship  
& Immigration Services,  
Department of Homeland Security  
20 Massachusetts Ave N  
Room 5003  
Washington D.C., 20529

Denise Frazier, Director  
United States Citizenship  
& Immigration Services  
2901 Metro Drive #100  
Bloomington, MN 55425

T. Diane Cejka, Director  
National Records Center,  
United States Citizenship &  
Immigration Services, Department  
Of Homeland Security, P.O. Box 648010,  
Lee's Summit, Missouri 64064-8010.

Defendants.

Case Number \_\_\_\_\_

**COMPLAINT FOR**

**INJUNCTIVE RELIEF**

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1. This is an action under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, for injunctive and other appropriate relief and seeking the disclosure and release of agency records improperly withheld from Plaintiffs by Defendant Department of Homeland Security and its component the U.S. Citizenship & Immigration Services.

### **Jurisdiction and Venue**

2. This Court has both subject matter jurisdiction and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552 (a)(4)(B). This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331. Venue lies within this district under 5 U.S.C. § 552 (a)(4)(B).

### **The Parties**

3. Plaintiff Florence Austin is a Nigerian citizen who has resided in the State of Minnesota since 1995. Ms. Austin is the requester of withheld records which primarily concern her ability to live in the United States. Ms. Austin has been married to Nia Austin, a United States citizen, since November 10, 2001.

4. Plaintiff Nia Austin is an American Citizen who is married to Plaintiff Florence Austin. Mr. Austin is the requestor of withheld records which concern his wife's ability to live in the United States.

5. Defendant U.S. Citizenship & Immigration Services (CIS) is a bureau within the

Department of Homeland Security, the federal agency of the United States which has possession and control over the records the Plaintiff seeks. On March 1, 2003, the Immigration and Naturalization Service (INS) dissolved and certain functions were transferred to the three new bureaus known as the CIS, ICE and CPB under the Department of Homeland Security.

**The Government's Untimely Denial of Mr. Austin's Immigrant Petition for Ms. Austin**

6. On December 31, 2001, Plaintiffs filed an I-130 Immigrant Petition and an application to adjust status to permanent residence. The Defendant CIS interviewed the Plaintiffs on February 12, 2003 at the CIS office in Bloomington, Minnesota. The Examiner for the Defendant and Mr. Austin argued during the interview due to the highly-personal nature of one of the Examiner's questions. The CIS did not render a decision on the Plaintiff's applications at the interview.

7. Early in the morning on October 6, 2003, Defendant CIS took the unusual action of making a surprise visit to the Plaintiffs' residence. The Defendant searched the premises and interrogated Ms. Austin. Again, the CIS did not render a decision on the Plaintiff's applications following this home visit.

8. After delaying adjudication of the adjustment application for more than four years, on February 22, 2006, the Defendant issued the Plaintiffs a Notice of Intent to Deny, to which Mr. Austin timely responded.

9. On April 28, 2006, the CIS denied Mr. Austin's I-130 Immigrant Petition on the basis the Plaintiffs had a sham marriage for immigration benefits. The Plaintiff's application to adjust status was consequently denied as well.

10. Mr. Austin timely appealed the Defendant's denial of the Immigrant Petition on May 24, 2006. The CIS generously extended the filing deadline for Mr. Austin's legal brief to support the appeal because the Defendants delayed responding to the Plaintiff's request under the FOIA for her file. This extension ended on September 28, 2007 when the CIS demanded Mr. Austin's legal brief with or without the FOIA response from the Defendant. On September 28, 2007, Mr. Austin filed his legal brief without having had an opportunity to review his wife's immigration file.

11. If the Plaintiff and Mr. Austin cannot overturn the CIS' denial of the Immigrant Petition, the Plaintiff may be forced to leave the United States for the duration of her life.

**The Defendant's Improper Delay and Withholding of the Plaintiff's Immigration Records**

12. On May 10, 2006, Ms. Austin filed a request with Defendant CIS for a copy of her entire immigration file through the Freedom of Information Act (FOIA), 5 U.S.C. § 552 in order to review the underlying record of the Defendant's denial.

13. Eighteen months later, on November 30, 2007, the Defendant CIS provided the Plaintiff with a portion of the records from her 485-page immigration file. The Defendant withheld over

twenty-one pages in part and 143 pages in their entirety from release to the Plaintiff. The information was generally withheld under 5 U.S.C § (b)(2), (b)(5) (b)(6), (b)(7)(C), and (b)(7)(E) of the FOIA.

14. On December 14, 2007 the Plaintiff appealed the withheld 164 pages of her immigration record. The Defendant provided a receipt dated January 9, 2008. To date, Defendant CIS has not responded to this appeal. Defendant CIS has wrongfully failed to respond to this appeal and wrongfully withheld the requested records from Ms. Austin.

15. On January 7, 2008 Mr. Austin filed a request for information about himself with the Defendant through the FOIA, 5 U.S.C. § 552. The Plaintiff additionally sent a copy of Mr. Austin's FOIA request to the Defendant to be attached to her FOIA appeal on January 7, 2008 to instruct the Defendants that Mr. Austin authorized the release of information about himself to his wife's legal counsel.

16. On January 16, 2008 the Defendant informed Mr. Austin that it had no records responsive to his FOIA request but indicated there were two records in the possession of the local CIS office in Minnesota which Mr. Austin needed to contact.

17. Mr. Austin requested a copy of his records under FOIA from the Defendant local CIS office in Minnesota on January 30, 2008. This office has not yet responded to this request, although the FOIA requires the Defendant to provide a response within twenty working days.

18. Mr. Austin appealed the Defendant's constructive denial of his FOIA request on February 19, 2008, received by the Defendants on February 25, 2008. On March 18, 2008 the Defendant remanded Mr. Austin's FOIA request back to the Defendant's National Records Center. The Defendant's National Records Center has not responded to this remand although more than twenty business days have passed.

19. Defendant CIS has wrongfully failed to comply with Mr. Austin's request for a copy of his records.

20. Plaintiffs have a statutory right to the records they seek and there is no legal basis for Defendant's refusal to disclose them. The Plaintiffs have exhausted all administrative remedies with respect to the request for their files under the FOIA.

#### **Requested Relief**

**WHEREFORE, the Plaintiffs request that the Court declare the following:**

1. Declare that Defendant's refusal to disclose the records requested by Plaintiff is unlawful;
2. Order Defendant CIS to disclose the requested records in their entireties to and make copies available to Plaintiffs;
3. Order that this case be expedited;
4. Award Plaintiffs their costs and reasonable attorney's fees in this action as provided by 5 U.S.C. § 552(a)(4)(E); and
5. Grant such other and further relief as this Court may deem just and proper.

Respectfully submitted,

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612-605-1199  
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